

## CURRENT DEVELOPMENTS

# The Bemba Trial Judgment: A Small Step in the Right Direction

KATERINA KATSIMARDOU-MIARITI — 2 May, 2016



### ***The decision***

On 21st March 2016 Trial Chamber III of the International Criminal Court (ICC) found Jean-Pierre Bemba Gombo (Bemba) guilty for murder and rape as a war crime and crime against humanity, as well as pillaging as a war crime, committed in the Central African Republic (CAR) in the period between 2002-2003. Bemba, a Congolese citizen, was the President of the *Mouvement de Libération du Congo* (MLC) as well as the Commander-in-Chief of its army component, the *Armée de Libération du Congo* (ALC). The

Chamber found that the MLC soldiers, under the *effective authority* of Bemba, directed a widespread attack against the civilian population in the Central African Republic, committing acts of murder, rape and pillaging against civilians, across a large geographical area.

The Decision is notable for two reasons: It is the first ICC conviction pursuant to command responsibility. This is an aspect that has already been the focus of some academic commentary analyzing the Chamber's decision and examining its impact for future prosecutions.

The Decision is also the first ICC conviction on sex crimes, namely rape, as a core international crime. Without advancing the jurisprudence developed by the *ad hoc* international criminal tribunals for the Former Yugoslavia and Rwanda, it rather builds upon it and reaffirms the gravity and societal impact of sexual violence as an atrocity crime.

It is also the first time in international criminal law where sexual violence against men is recognized as rape. In the past, the rape of men has been addressed as a crime of torture, outrage upon personal dignity or cruel treatment. It has been noted in the past that sexual violence against men “takes place in nearly every armed conflict in which sexual violence is committed. What remains unknown is the precise extent to which this crime occurs”. The recognition of male rape as a sexual crime is thus extremely important, as it may prove to be a turning point for the investigation and prosecution of a traditionally under-reported crime.

The Trial Chamber convicted Bemba for rape as a crime against humanity and war crime, for the rapes of 27 women and two men committed by his soldiers. As Géraldine Mattioli-Zeltner, the international justice advocacy director

at Human Rights Watch noted, the decision is a “stark warning to senior commanders who turn a blind eye while their troops rape and commit other atrocities”.

However, despite the impression that “international criminal justice seems to be on the march” and the symbolic importance of such a decision, one cannot ignore the serious shortcomings of both the international and national criminal justice systems in fighting impunity for sexual and gender-based atrocities and delivering justice to the numerous victims of these crimes.

### ***The situation in DRC and CAR***

Sexual violence has been a central feature of the conflict situation both in the Democratic Republic of Congo (DRC) and the Central African Republic (CAR). Despite the difficulty of collecting reliable and up-to-date data, numerous sources indicate extremely high numbers of sexual violence.

In the DRC, a nationwide study covering the period between January and August 2007- indicated that 16% of women had experienced forced sex. Data released by the DRC Ministry of Gender, Family and the Child recorded 10,322 sexual violence incidents in 2011 and 15,654 in 2012, all in the context of the armed conflict. In the CAR, between January and October 2015, the Gender Based Violence Information Management System recorded 29,801 cases of sexual violence, including rape, gang rape, sexual slavery, sexual exploitation and abuse and sexual aggression. Numerous accusations have surfaced, involving international peacekeepers in the sexual abuse of civilians, including children, while at the opening of the CAR investigation it was observed that this was the first investigation in which “allegations of sexual crimes far outnumbered alleged killings”. It was further noted that “the

rape of civilians was committed in numbers that cannot be ignored under international law”.

### ***A missed opportunity?***

The numbers alone are enough to question the prosecutorial strategy of the ICC thus far.

In the DRC situation, the ICC Office of the Prosecutor (OTP) has come under fire for not shedding light into the sexual abuse of the victims of Thomas Lubanga, the first indictee that was convicted by the Court.

Moreover, a cursory examination of the charges so far, indicates that only rape and sexual slavery charges have been examined by the Court. This may well be justified by the facts and evidence available in each case, but the absence of investigations and prosecutions of the other forms of sexual violence recognized under the Rome Statute – which in addition to rape and sexual slavery criminalizes also enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence – is quite remarkable.

The OTP has recognized the “challenges of, and obstacles to, the effective investigation and prosecution of sexual and gender-based crimes”, in its 2014 Policy Paper on Sexual and Gender-Based Crimes and has elevated the issue to one of its key strategic goals.

Whether this will translate in an increased number of investigations and prosecutions of the full range of sexual and gender-based violence crimes recognized under the Rome Statute remains to be seen. The increased awareness of the gravity of sexual and gender-based violence and its

impact on the affected societies as a whole is encouraging nonetheless.

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